

COUNTY COUNCIL OF FREDERICK COUNTY
MEETING MINUTES
Tuesday, September 22, 2020

Council Members M.C. Keegan-Ayer, President; Michael Blue, Vice-President, Jerry Donald, Kai Hagen, Jessica Fitzwater, Phil Dacey and Steve McKay were present for the meeting.

Also present were Ragen Cherney, Chief of Staff, County Council; Bryon Black, County Attorney; Catherine Keller, Assistant County Attorney; Sarah Ambrosio, Recording Secretary; and Nancy Luna, Executive Assistant, County Council.

Council President M.C. Keegan-Ayer called the meeting to order at 4:30 p.m. virtually via video conference.

Opening Statement from Council President M.C. Keegan-Ayer

Good Evening and welcome to the virtual meeting of the Frederick County Council. Today is Tuesday, September 22, 2020, and it is a legislative day for the County Council.

The Frederick County Council is continuing to conduct our meetings on-line during this time and it seems this may be the way we will be holding our meetings for the foreseeable future due to concerns about the spread of the COVID virus.

Our meetings are televised on Frederick County Government Channel 19, on Frederick County Government's website: www.FrederickCountyMD.Gov/FCGTV, and while we are meeting virtually, we will continue to use our software program which allows the public to watch and participate in our meetings. Please go to www.frederickcountymd.gov/councilmeetings in order to watch us on that format.

You may still send us comments via email at: (Councilmembers@frederickcountymd.gov), or by calling our office line (301) 600-1135 and leaving a voicemail message. Or using our virtual format, you may call toll free 855-925-2801 and enter meeting code 8365 to listen to our meetings live and to give public comment. I will be giving instructions for how to give public comment before each portion of our meeting when public comment will be received. As always, all comments received will be reflected in the minutes.

As a reminder during these virtual meetings, I will periodically stop to allow the members to ask any questions in a round robin type fashion, calling the council members by name to make sure the public is aware of which member has the floor.

As a continued caution to our Council Members – Please be respectful of each other's time and wait to be recognized before you begin to speak. Remember the microphone issue and please limit your questions to one at a time. I will come back around as often as necessary until all questions are heard.

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To begin our meeting, I will start with a roll call vote to determine a quorum. Just respond with “here”. Again, going in alphabetical order: CM Blue, Dacey, Donald, Fitzwater, Hagen, and McKay. A quorum having been established, we will begin our meeting.

The meeting began with a moment of silence followed by the Pledge of Allegiance.

Action on the Agenda

Council Member Michael Blue moved to approve the agenda with the proviso of moving Items V.c., and V.d, Action on Cromwell PUD Rezoning Case 3R-19-01 and Delauter-Hutzell MXD Rezoning Case #R-19-02 to be occur after the Third Reading Calendar. Council Member Jessica Fitzwater seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

Public Comment was heard from:

- None

Business Items:

Public Hearing - Petition to Open-Close-Alter Portions of Meadow Road and Old National Pike Located at the I-70 Meadow Road Interchange

Robert Shen, Department Head, Department of Engineering & Construction Management (DECM) and David Olney, Engineering Supervisor, Traffic and Permit Section, DECM, Division of Public Works, presented information to the Council on the Petition to Open-Close-Alter Portions of Meadow Road and Old National Pike Located at the I-70 Meadow Road Interchange.

Public Comment was heard from:

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- None

Council Member Steve McKay moved to approve the Petition to Open-Close-Alter Portions of Meadow Road and Old National Pike Located at the I-70 Meadow Road Interchange as presented. Council Member Kai Hagen seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

Proposed Bill – Use of the School Construction Fee Option

Steve Horn, Director, Planning and Permitting Division and Mike Wilkins, Director, Department of Development Review and Planning, Planning and Permitting Division provided information to the Council on the Proposed Bill – Use of the School Construction Fee Option.

Motion to go Into Closed Session

A motion was made at 5:15 p.m., by Council Member Michael Blue, to go into closed session in accordance with Maryland Annotated Code General Provisions Article §3-305(b)(1) To discuss (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or (ii) Any other personnel matter that affects one or more specific individuals. Council Member Jerry Donald seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		

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At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

***The council went into closed session at 5:20 p.m.*

Finalization of 2021 General Assembly Legislative Council Requested Items to take to Public Hearing

Council Members held a public hearing on proposed Maryland General Assembly items for the 2021 Session.

1. To provide for limited special elections to fill vacancies on the Frederick County Board of Education.
2. Position Statement in support of legislation regarding required advertising for the setting of the Constant Yield Tax rate.
3. Position statement in support of the Maryland Strategic Energy Initiative Investment Fund – Regional Greenhouse Gas Initiative – Use of Proceeds for Maryland Healthy Soils Program.
4. Position statement in support of local zoning authority for large solar utility projects.

Public Comment was heard from:

- None

Amended Bill No. 20-15 – Defining a “Farmers Market” in the Zoning Ordinance, as a specific type of Temporary Outdoor Activity in certain zones, and as a Customary Accessory Use on property zoned Institutional

Council Member Steve McKay presented information on the Amended Bill No. 20-15 - Defining a “Farmers Market” in the Zoning Ordinance, as a specific type of Temporary Outdoor Activity in certain zones, and as a Customary Accessory Use on property zoned Institutional.

Public Comment was heard from:

- None

Council took a break from 7:50 p.m. to 8:00 p.m.

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Discussion and Action on Cromwell PUD Rezoning Case #R-19-01

Council members discussed the Cromwell Rezoning Case #R-19-01.

Council Member Steve McKay moved to preserve the existing mature forested areas to the greatest extent possible. Council Member Kai Hagen seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

Council Member Steve McKay moved to approve that the applicant shall not be allowed any residential building permits until the cumulative total of available pipeline dwellings (i.e., approved but not permitted) from the following developments falls below 1000 homes:

- a. Eaglehead/Lake Linganore PUD*
- b. Oakdale Village*
- c. Blentliner PUD*
- d. Casey PUD*
- e. Landsdale PUD*
- f. Overlook at Longbranch*
- g. Preserve at Longbranch*
- h. Ridges at Longbranch*
- i. Tallyn Ridge*

Council President M.C. Keegan-Ayer seconded the motion that failed 3-4.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater		X	
District 5 – Blue		X	

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At-large – Dacey		X	
At-large – Hagen		X	
Presiding Officer – Keegan-Ayer	X		

Council Member Steve McKay moved to approve that the applicant shall not be allowed any residential building permits until five (5) years following the effective date of this ordinance. Council President M.C. Keegan-Ayer seconded the motion that passed 5-2.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey		X	
At-large – Hagen		X	
Presiding Officer – Keegan-Ayer	X		

Council took a break from 8:36 p.m. to 8:50 p.m.

Council President M.C. Keegan-Ayer moved to approve that the builder collect a small fee for each unit sold to contribute to the cost of building a senior center. Council Member Steve McKay seconded the motion that failed 3-4.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater		X	
District 5 – Blue		X	
At-large – Dacey		X	
At-large – Hagen		X	
Presiding Officer – Keegan-Ayer	X		

The Council reviewed the motion on the table, which had been made by Councilman Kai Hagen and seconded by Councilman Phil Dacey (motion originally made on 9/15, and tabled by vote for further discussion until 9/22) to approve the Cromwell Rezoning Case #R-19-01. Staff then reviewed the list of conditions that Council approved, including the following:

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1. A maximum of six hundred (600) residential, age restricted dwelling units will be allowed on the property.
2. Covenants shall restrict 100% of the dwelling units of the project to be age-restricted per the Federal Fair Housing Act and the Housing for Older Persons Act of 1995. Covenants shall further limit the minimum age of permanent residents to 19 years of age. These covenants shall be recorded and made part of the chain of title for each dwelling unit. Every property owner within the age-restricted development (and HOA) shall be beneficiaries of the covenants with the ability to enforce them through administrative or judicial proceedings. The covenants are to be reviewed by and found acceptable to the County Attorney prior to recording. The PUD zoning is invalid if covenants as described herein are not recorded and do not restrict age of residents in a binding and enforceable manner. The required biannual federal surveys (24 CFR 100.307) shall be made available to the County for its review and records.
3. There shall be no direct motorized vehicle access to Meadow Road from the project.
4. Prior to recordation of the first residential subdivision plat, the developer shall: (1) subdivide and convey to the County, the +/- 4-acre public use site identified on the Concept Plan in a development-ready state (site graded, public water & sewer connections available to the site, and storm water management facilities (for quantity) completed); or (2), or at the County's sole discretion, enter into a mutually agreeable Memorandum of Understanding to provide for the conveyance of the +/- 4-acre public use site and the condition(s) under which the public use site will be conveyed.
5. Prior to recordation of the first residential subdivision plat, roadway identified as Lake Linganore Boulevard must be constructed in its entirety from the Linganore Town Center to Meadow Road and the I-70 ramp and open to traffic.
6. The connection of Neuville Street to Lake Linganore Boulevard shall not be open to traffic until Lake Linganore Boulevard is open to traffic from Meadow Road to its current terminus in Linganore Town Center.
7. If any historic structures are proposed for demolition, the Applicant shall provide the County with access to the structure(s) in order to document the house, outbuildings, and other related structures at least 90 days prior to the start of demolition.
8. The Applicant shall have a qualified professional investigate and locate any cemetery or burial ground that may be located on the site prior to the Preliminary Plan approval and prior to the issuance of a grading permit.
9. The Applicant shall address and resolve the issue of vehicular access to the property of Mary A. Stull & Martin E. Castle Sr. (TM 78, P. 0336).

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10. During the Phase II process, the Applicant shall provide buffering and screening to mitigate noise and light pollution for property owners on Hutzell Road.

11. During the Phase II process, the Applicant shall provide substantial natural screening (a combination of berms and plants) to mitigate noise and light pollution for property owners on Meadow Road.

12. The Applicant shall preserve the existing forested areas to the greatest extent possible, and shall only clear those forested areas as required for providing water and sewer service to the site, and for the stream crossing planned in the northeast portion of the site.

13. No building permits shall be issued, except for model homes, until five (5) years after the effective date of this Ordinance.

The motion passed 5-2.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay		X	
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer		X	

Discussion and Action on Delauter - Hutzell MXD Rezoning Case #R-19-02

Council members discussed the Delauter – Hutzell MXD Rezoning Case #R-19-0-02.

Council Member Jessica Fitzwater moved to approve the Delauter – Hutzell MXD Rezoning Case #R-19-02 with approval of all Planning Commission Recommendations and additional conditions. Council Member Kai Hagen seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		

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At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

Council Members discussed the conditions in the Delauter – Hutzell MXD Rezoning Case #R-19-02. Council agreed by show of hands on the conditions brought forth by the applicant and also additional conditions brought forth by Council Members. The conditions are:

1. The Applicant shall prepare a feasibility report documenting any potential adaptive reuse of the property located at 9820 Old National Pike, known as the Cordelia Dorsey House/Pennybaker-Dean Tavern (MIHP# F-5-55). This report shall be made available to the County prior to the submission of the first subdivision plat or site development plan application.
2. The Applicant shall consult SHA's Context Sensitive Solutions for the Maryland National Historic Road Scenic Byway as part of the preparation of subdivision and site plans for the property.
3. Milestone marker No. 40 shall be protected during any construction or site preparation activity associated with the proposed development of the MXD, and retained in its current location along Old National Pike.
4. The dedication of right of way for Lake Linganore Boulevard shall be provided at the earliest of either the first subdivision plat, or on demand by the County, or on demand by the developer of Cromwell, to facilitate completion of the Master Planned Road.
5. The Applicant shall provide natural and substantial buffers along the western and northern property boundaries of the property. The buffer along the western property boundary shall extend southward from the northwestern property corner (at Meadow Road) to the intersection of Meadow Road and Lake Linganore Boulevard (extended).

Public Comment was heard from:

- None

Council Member Jessica Fitzwater moved to approve the Delauter – Hutzell MXD Rezoning Case #R-19-02 with noted conditions. Council Member Kai Hagen seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		

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District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

Council Member Comments:

Council Member comments were provided.

Adjourn

The meeting adjourned at 10:00 p.m.

M.C. Keegan-Ayer, President
County Council

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**FORM OF STATEMENT FOR
CLOSING THE MEETING OF TUESDAY, SEPTEMBER 22, 2020**

STATUTORY AUTHORITY TO CLOSE SESSION

Maryland Annotated Code General Provisions Article §3-305(b)(1) To discuss (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or (ii) Any other personnel matter that affects one or more specific individuals.

Motion

A motion was made at 5:15 p.m., by Council Member Michael Blue, to go into closed session in accordance with Maryland Annotated Code General Provisions Article §3-305(b)(1) To discuss (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or (ii) Any other personnel matter that affects one or more specific individuals. Council Member Jerry Donald seconded the motion that passed 7-0.

Time and Location:

5:20 p.m. – Held Virtually Via Teams Meeting

Topic for Discussion:

To evaluate and interview possible candidates that the Council may consider for confirmation.

M.C. Keegan-Ayer, President
County Council

**COUNTY COUNCIL OF FREDERICK COUNTY
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**FORM OF STATEMENT FOR MINUTES OF NEXT OPEN MEETING
ON TUESDAY, SEPTEMBER 22, 2020
FOLLOWING THE CLOSED MEETING OF TUESDAY, SEPTEMBER 22, 2020**

STATUTORY AUTHORITY TO CLOSE SESSION

Maryland Annotated Code General Provisions Article §3-305(b)(1) To discuss (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or (ii) Any other personnel matter that affects one or more specific individuals.

Motion:

A motion was made at 5:15 p.m., by Council Member Michael Blue, to go into closed session in accordance with Maryland Annotated Code General Provisions Article §3-305(b)(1) To discuss (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or (ii) Any other personnel matter that affects one or more specific individuals. Council Member Jerry Donald seconded the motion that passed 7-0.

Time and Location:

5:20 p.m. – Held Virtually Via Teams Meeting

Others in Attendance:

Ragen Cherney, Council Chief of Staff; Catherine Keller, Assistant County Attorney; Sarah Ambrosio, Recording Secretary; Rick Harcum, Chief Administrative Officer, County Executive's Office;

Topic Discussed:

To evaluate and interview possible candidates that the Council may consider for confirmation.

Action Taken:

None

M.C. Keegan-Ayer, President
County Council